

### **REMARKS/ARGUMENTS**

Claims 37-46 are under examination in this application. Claims 40 and 43 have been cancelled. The Office Action mailed on November 13, 2007, includes the following rejection:

1. Claims 37-39, 41, 42 and 44-46 are rejected under 35 U.S.C. 102.
2. Claim 40 is rejected under 35 U.S.C. 102(a).
3. Claim 43 is rejected under 35 U.S.C. 102(a).

Applicants respectfully address the basis for each of the rejections below.

#### ***Amendment to the Claims***

Applicants respectfully submit that the amendments to the claims are fully supported by the application as originally filed and specifically in paragraph [0014, 0033, 0037, 0041, 0042, 0046, 0052, and 0061] and as such do not introduce new matter.

#### ***Claims 37-39, 41, 42 and 44-46 are rejected under 35 U.S.C. § 102***

Claims 37-39, 41, 42 and 44-46 are rejected under 35 U.S.C. 102(e) as being anticipated by United States Patent number 6,749,861 issued to Mullen ("Mullen").

Applicant submits that Mullen does not **identically disclose every element** of the claimed invention. See *Corning Glass Works v. Sumitomo Electric*, 9 USPQ 2d 1962, 1965 (Fed. Cir. 1989). A reference that excludes a claimed element, no matter how insubstantial or obvious, is enough to negate anticipation. *Connell v. Sears, Roebuck & Co.*, 220 USPQ 193, 198 (Fed. Cir. 1983). As such, Mullen does not anticipate the present invention.

Specifically, Mullen does not disclose a method of screen printing a scent to a fabric article by applying a scented gel carrier at a thickness of between about 5 and about 800 microns to a fabric substrate by a screen printing process, wherein the scented gel carrier comprises one or more scents dispersed in or about a gel polymer matrix at a ratio of about 100 parts gel

polymer matrix to about 2 to about 40 parts one or more scents wherein the gel polymer matrix comprises a plastisol-type composition selected from the group of phthalic acid esters, alkyl sulfonic acid esters of phenol and one or more rosin compounds that act as an adhesive or a tackifier; and curing the scented gel carrier at a temperature of between about 140 and about 275 degrees Fahrenheit to bond the scent gel carrier to the article such that one or more washes with a mild detergent of the article will not remove the scented gel carrier from the fabric substrate. Mullen merely discloses an insect composition comprising at least one fragrance capable of repelling insects and at least one non-fragrance insect repellent which is soluble in the fragrance. In preferred embodiments the composition also includes an absorption substrate carrier. These compositions provide effective contact and area repellency while maintaining a pleasant aroma. Mullen arguably provides a fragrance-containing coating composition for paper substrates consists essentially of (a) a polyvinyl chloride plastisol (PVC plastisol –of which there are numerous types) and (b) one or more fragrances. Mullen goes on to state that the PVC plastisol is a dispersion which typically contains polymer and a plasticizer(s). The paper substrate can be a non-calendered, non-coated porous paper, a coated, non-calendered paper, or a calendered, optionally coated paper. When the paper is calendered and/or coated the PVC plastisol can further contain an adhesion promoter.

As a result, Mullen does not identically disclose the present invention and cannot anticipate the present invention. Applicant respectfully requests the withdrawal of the rejection and re-issuance of the Notice of Allowance.

***Claim 40 is rejected under 35 U.S.C. § 103 as being unpatentable***

The Action rejects claim 40 under 35 U.S.C. § 103 as being unpatentable over Mullen in view of United States Patent number 4,752,496 issued to Fellows (“Fellows”).

Applicants respectfully submit that claim 40 is not obvious over Mullen in view of Fellows as the combination of references fails to establish a prima facie case of obviousness for numerous reasons and claim 40 is, therefore, allowable under 35 U.S.C. § 103(a) for the reasons stated below.

As stated above and incorporated herein, Mullen does not identically disclose every

**element** of the claimed invention and the addition of Fellows does not cure this deficiency. The combination STILL does not teach each and every limitation of the present invention.

Even if Fellows did supply the missing elements the combination would still not render the present invention obvious as Fellows is non-analogous art, for the reasons stated in the prior responses and incorporated herein. The MPEP states that, “to rely on a reference under 35 U.S.C. § 103, it must be analogous prior art.” MPEP 2141.01(a). And even if Fellows were analogous art (which it is not), the combination of references would still fail to show a motivation or suggestion to combine references.

Fellows merely teaches a system for distributing and sampling cosmetics which are normally dry, are combined with a liquid carrier and film forming agent and deposited onto a substrate. **The film forming agent acts to microencapsulate the cosmetic and lightly bond the cosmetic to the substrate.** When the film forming agent dries, it protects the cosmetic. Thus, the cosmetic can be applied to a substrate and covered with a paperboard sheet. The cosmetic can be removed from the substrate as it is LIGHTLY bonded to the (NON-fabric) substrate.

Furthermore, the combination of a fragrance-containing **coating composition for paper substrates** (Mullen) and a cosmetic film that as is LIGHTLY bonded to the (NON-fabric) substrate and can be easily removed from a substrate (Fellows) cannot function as the present invention. The combination renders the prior art invention being modified unsatisfactory for its intended purpose. MPEP Section 2143.01(V) states that “[i]f proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.” Likewise, MPEP Section 2143.01 (VI) states “[i]f the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.”

The combination fails to establish a *prima facie* case of obviousness as it fails to provide: (1) some suggestion or motivation either in the reference itself, or within the knowledge generally available to one of ordinary skill in the art, to modify the reference; (2) a reasonable expectation of success, and (3) a teaching or suggestion in the prior art reference of all of the claim limitations (MPEP § 2143). *In re Vacek*, 947 F. 2d. 488 (Fed. Cir. 1991). As such, the

Applicant respectfully submits that claim 40 is not obvious over the cited art and are, therefore, allowable under 35 U.S.C. § 103(a). Applicant respectfully requests the withdrawal of the rejection and re-issuance of the Notice of Allowance.

***Claim 43 is rejected under 35 U.S.C. § 103 as being unpatentable***

The Action rejects claim 43 under 35 U.S.C. § 103 as being unpatentable over Mullen in view of United States Patent number 5,690,130 issued to Gunderman ("Gunderman").

Applicants respectfully submit that claim 43 is not obvious over Mullen in view of Gunderman as the combination of references fails to establish a prima facie case of obviousness for numerous reasons and claim 43 is, therefore, allowable under 35 U.S.C. § 103(a) for the reasons stated below.

As stated above and incorporated herein, Mullen does not **identically disclose every element** of the claimed invention and the addition of Gunderman does not cure this deficiency. The combination STILL does not teach each and every limitation of the present invention.

Gunderman merely teaches a cosmetic sampler with an integral applicator in which the unit dose of cosmetic is screen printed onto a **paper base**. To prevent off-set of the cosmetic sample and to protect the integral applicator during packaging and handling, **a protective thin film overlay is laminated to a perimeter adhesive printed on the paper base around the cosmetic and the applicator**. The applicator is glued as a laminate to the base and die cut in a desired shape, flocked to the base and die cut, or flocked into a debossed/embossed well formed in the base with the cosmetic sample screen printed directly thereover. The sampler with integral applicator of the present invention can be used for sampling unit doses of powders, creams, lipsticks, fragrances, pharmaceuticals, lotions, and sundries.

Even if Gunderman did supply the missing elements the combination would still not render the present invention obvious as Gunderman is also non-analogous art. The MPEP states that, "to rely on a reference under 35 U.S.C. § 103, it must be analogous prior art." MPEP 2141.01(a). And even if Gunderman were analogous art (which it is not), the combination of references would still fail to show a motivation or suggestion to combine references.

Furthermore, the combination of a fragrance-containing coating composition for paper substrates (Mullen) and a cosmetic film overlay laminated to a perimeter adhesive printed on the paper base around the cosmetic (Gunderman) cannot function as the present invention. The combination renders the prior art invention being modified unsatisfactory for its intended purpose. MPEP Section 2143.01(V) states that “[i]f proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.” Likewise, MPEP Section 2143.01 (VI) states “[i]f the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.”

The combination fails to establish a *prima facie* case of obviousness as it fails to provide: (1) some suggestion or motivation either in the reference itself, or within the knowledge generally available to one of ordinary skill in the art, to modify the reference; (2) a reasonable expectation of success, and (3) a teaching or suggestion in the prior art reference of all of the claim limitations (MPEP § 2143). *In re Vacek*, 947 F. 2d. 488 (Fed. Cir. 1991). As such, the Applicant respectfully submits that claim 43 is not obvious over the cited art and are, therefore, allowable under 35 U.S.C. § 103(a). Applicant respectfully requests the withdrawal of the rejection and re-issuance of the Notice of Allowance.

**Conclusion**

In light of the remarks, amendments and arguments presented above, Applicants respectfully submit that the claims in the Application are in condition for allowance. Favorable consideration and re-issuance of the Notice of Allowance of the pending claims are therefore respectfully requested.

If the Examiner has any questions or comments, or if further clarification is required, it is requested that the Examiner contact the undersigned at the telephone number listed below.

Dated: February 13, 2008.

Respectfully submitted,



---

Chainey P. Singleton  
Reg. No. 53,598

ATTORNEY FOR APPLICANTS

Customer No. 34,725  
Chalker Flores, LLP  
2711 LBJ Freeway Suite 1036  
Dallas, TX 75234  
214.866.0001 Telephone  
214.866.0010 Facsimile